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PROMOTION AND PROTECTION OF HUMAN RIGHTS
HUMAN RIGHTS DEFENDERS

Implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Report of the Secretary-General

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I INTRODUCTION

1. In its resolution 1999/66, entitled "Implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", the Commission on Human Rights, welcoming General Assembly resolution 53/144 of 9 December 1998 by which the Assembly adopted the Declaration and emphasizing the important role that individuals, non-governmental organizations and groups have to play in the promotion and protection of human rights and fundamental freedoms, called upon all States to promote and give effect to the Declaration and to report on activities they had undertaken in that regard. It further urged all treaty bodies and special representatives, special rapporteurs and working groups of the Commission and the Sub-Commission on the Promotion and Protection of Human Rights to give due regard to the Declaration within their mandates, and requested the Secretary-General to submit a report thereon to the Commission at its fifty-sixth session. Moreover, the Commission requested the Secretary-General to consider appropriate ways for the effective promotion and implementation of the Declaration and to submit a report to the Commission at its fifty-sixth session with proposals thereon and, in preparing his report, to seek the views of Governments, specialized agencies and relevant intergovernmental and non-governmental organizations.

2. The present report, submitted pursuant to resolution 1999/66, reviews the comments and proposals of Governments, specialized agencies and relevant intergovernmental and non-governmental organizations on the implementation of the Declaration, received by the Secretariat in response to its note verbale and letters of 15 September 1999 requesting such information. It also takes account of views expressed in statements on the Declaration made at the Commission on Human Rights at its fifty-fifth session. Second, the ways in which treaty bodies and special representatives, special rapporteurs and working groups of the Commission and the Sub-Commission have paid due regard to the Declaration within their mandates is explored. Finally, the present report considers appropriate ways for the effective promotion and implementation of the Declaration.

II MAIN ELEMENTS OF THE DECLARATION

3. The Declaration, often referred to as the "Declaration on Human Rights Defenders", was elaborated over a 13-year period which began in 1984 when the Commission decided[1] to establish an open-ended working group to draft an instrument on human rights defenders.

4. Article 1 of the Declaration underscores that: "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels." Article 2 underlines the "prime responsibility and duty" of each State "to protect, promote and implement all human rights" and to take "such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice." Article 2 (2) obliges each State to adopt legislative, administrative and other steps as may be necessary to ensure effective implementation.

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[1] See Commission on Human Rights decision 1984/116 of 16 March 1984.

5. Article 5 reaffirms the right of everyone, individually and in association with others, whether at national or international level, to meet or assemble peacefully, form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations. Article 6 reaffirms the right to know, seek, obtain, receive and hold information about all human rights, including access to information about domestic legislative, judicial and administrative practice. Article 7 reaffirms that everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance. The right to participate in the government of his or her country on a non-discriminatory basis as well as the right "to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms" is guaranteed in article 8. Article 9 details the right to benefit from an effective remedy, the right to bring a complaint about official policies and acts concerning human rights and to have it reviewed in a public hearing in accordance with law.

6. Article 12 of the Declaration further defines existing norms concerning the right to participate in peaceful activities against violations of human rights and fundamental freedoms and, in particular, obligates the State to "take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration". This provision is supplemented by article 12 (3) which entitles everyone, individually and in association with others, to effective protection under domestic law in cases where he or she, through peaceful means, reacts against or opposes acts or omissions attributable to the State that result in human rights violations or, equally, violent acts carried out by groups or individuals that affect the enjoyment of human rights.

7. Articles 14 and 15 set out the corresponding obligations of the State to promote public understanding of its civil, political, economic, social and cultural rights, by such means as publishing and making available national laws and international documentation pertaining to human rights as well as to ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and provide support to human rights education at all levels.

8. The Declaration reaffirms, clarifies and strengthens established international legal norms pertaining to the important work of human rights defenders and provides an important basis for effective implementation by building upon the Charter of the United Nations, the Universal Declaration of Human Rights and the general corpus of international human rights law.

III VIEWS OF GOVERNMENTS, SPECIALIZED AGENCIES AND INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS ON IMPLEMENTATION OF THE DECLARATION

A Governments

9 The Government of Colombia outlined its plan for the promotion and protection of activities of national and international non-governmental organizations working in the field of human rights, indicating that the protection of human rights defenders remains a priority. Civil servants are obliged to refrain from undermining human rights organizations or their members and to comply promptly with information requests coming from human rights organizations. The Government explained that the head of the Human Rights Division of the Ministry of the Interior is mandated to process requests for protection and take measures in the context of witness protection programmes. Governors and mayors are authorized to review situations involving a risk to human rights defenders.

10 The Government of Croatia indicated that it had become a party to all relevant international and regional instruments for the promotion and protection of human rights and had incorporated international human rights standards into its Constitution. Articles 42 and 43 of the Constitution guarantee the right to peaceful assembly and public protest, as well as freedom of association. Croatia has set up an Office for Cooperation with Non-Governmental Organizations to establish confidence and promote systematic cooperation between the Government and NGOs.

11 Finland responded, on behalf of the European Union (EU) and the Central and Eastern European countries associated with the European Union, namely, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, and the "associated countries" Cyprus and Malta, that the Declaration was among the most valuable contributions to the commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights. The EU underlined the increasingly important role of civil society, non-governmental organizations and committed individuals in promoting the implementation of human rights. It stressed that the Declaration was designed to provide recognition, protection and support for individuals, groups and organizations at the forefront of efforts to promote and protect human rights and that by adopting the Declaration by consensus, States acknowledged the legitimacy and importance of the work of human rights defenders. The EU considered that the Commission on Human Rights at its fifty-sixth session should create or request the Secretary-General to establish a new mechanism: a special rapporteur or special representative of the Secretary-General on human rights defenders. The EU also highlighted the role of the Office of the High Commissioner for Human Rights in promoting the implementation of the Declaration and suggested that this role could be strengthened by establishing a focal point for human rights defenders in the Office. Finally, the EU encouraged the international community to build on its commitment to the Declaration to make it a document that really made a difference for the many known and unknown heroes whose contribution to the promotion and protection of human rights worldwide remains indispensable.

12. The Government of New Zealand pointed out that, although no law specifically addressed individuals or groups carrying out human rights activities, common law and statutory remedies remain available to human rights defenders in New Zealand. For example, the New Zealand Bill of Rights Act, 1990, provides, inter alia, for freedom of thought, conscience and religion, freedom of expression, manifestation of religion and belief, freedom of peaceful assembly, and freedom of association. Human rights defenders enjoy the same basic fundamental rights and freedoms available to anyone in New Zealand within the limits prescribed by law. Effective remedies are available whether rights are violated by State authorities or private parties.

13. The Government of Norway explained that under Norwegian law, there were no registration requirements or other conditions for the establishment or operation of human rights activities. Norway was currently in the process of finalizing a National Plan of Action for Human Rights which focuses on strengthening public opinion with regard to human rights as well as supporting human rights capacity- and competence-building in all sectors of society. It also stated that there was an urgent need to implement the Declaration and that the establishment of a mechanism to carry out this responsibility should be considered. Such a mechanism could assist in the improvement of conditions through advice and information on best practices and could also assist in facilitating information flows among States and in the United Nations system through communications and regular reports on the situation of human rights defenders. Norway also remained open to discuss what form such a mechanism should take and that the concept of a special rapporteur seemed suitable and familiar as an established practice of the Commission on Human Rights. The proposal to appoint a special representative or other form of envoy also merited special attention. The Government stated its willingness to assist OHCHR in establishing a focal point or in employing other means by which to support the work of human rights defenders.

B. National human rights institutions

14. The South African Human Rights Commission stated that all treaty bodies, special representatives, special rapporteurs and working groups of the Commission and the Sub-Commission should be requested to accord due regard to the Declaration. It recalled that States must take primary responsibility and develop a constitutional system that promotes human rights. Similarly, the appropriate State institutions, non-governmental organizations and intergovernmental organizations should be called upon to promote the Declaration at all times. It also suggested that a popularized version of the Declaration should be distributed at every level of formal and informal education.

C. Non-governmental organizations

15. Amnesty International replied that human rights defenders in many parts of the world remained at risk and recalled that in the past the Commission has called upon the human rights mechanisms to address specifically the question of human rights defenders (for example, resolution 1998/74). Amnesty International urged the Commission to appoint a special rapporteur with a mandate to monitor, document and intervene on behalf of human rights defenders under threat.

16. The Colombian Commission of Jurists stated that it was important that States review their national legislation to ensure its compatibility with the Declaration. All States must refrain from making false accusations that could endanger the security of human rights defenders. They should review the activities of intelligence services to avoid undermining the work of human rights defenders and, moreover, should adopt protective programmes for defenders and ensure impartial and independent adjudication procedures for cases where human rights defenders were threatened or attacked. Human rights education and training should be provided for the military services and police.

17. International Service for Human Rights, responding also on behalf of the International Commission of Jurists, the Lawyers Committee for Human Rights, the Association for the Prevention of Torture, the Baha'i International Community, the International Federation of Action of Christians for the Abolition of Torture and Amnesty International, stated that the Declaration provided a yardstick for a new United Nations mechanism to deal with the question of human rights defenders. The existing thematic and country mechanisms did not cover all the issues relating to the free and effective functioning of human rights defenders, such as their right to freedom of association and movement, and would not be able to review comprehensively the Declaration's implementation or adequately investigate individual cases. A special rapporteur on human rights defenders therefore should be appointed to review implementation, develop a methodology for investigations of individual cases, oversee technical assistance provided by OHCHR, and make recommendations to the Commission.

18. The Observatory for the Protection of Human Rights Defenders, a joint programme of the World Organization against Torture and the International Federation of Human Rights Leagues, described the severity of violence directed against human rights defenders, referring to more than 200 cases in some 40 countries, including summary or extrajudicial executions, torture, illegal or arbitrary detention, judicial persecution and violation of the right to a fair trial. It also indicated that it would be sending to the Secretariat its annual report, entitled "Human Rights Defenders on the Front Line", as soon as it was available. The Observatory proposed that the question of human rights defenders should be included in all United Nations proceedings relating to human rights and that a special rapporteur and a unit or focal point in OHCHR should be established to deal with human rights defenders.

19. The full texts of replies remain available for consultation at the Secretariat.

IV. APPROPRIATE WAYS FOR EFFECTIVE PROMOTION AND IMPLEMENTATION OF THE DECLARATION

20. The observations of Governments, specialized agencies and relevant intergovernmental and non-governmental organizations on implementation of the Declaration on Human Rights Defenders, as expressed in their replies submitted in response to the Secretariat's note verbale and letters of 15 September 1999, and instances indicating due regard for the Declaration's implementation, provide the basis for the possibilities discussed below.

21. The Declaration should be popularized and widely distributed. There was a general consensus that Governments, specialized agencies and relevant intergovernmental and

non-governmental organizations all have a responsibility to ensure wide distribution of the Declaration. In this connection, OHCHR is currently preparing a fact sheet on human rights defenders for wide distribution.

22. Monitoring of the implementation of the Declaration should be incorporated in an existing United Nations mandate or mandates. One proposal advanced is to enhance monitoring of the implementation of the Declaration through an existing Commission mandate or mandates.

23. A new United Nations mandate on monitoring of the implementation of the Declaration should be established. Another proposal advanced was that the Commission could consider the establishment of a new mandate on human rights defenders to examine and respond more systematically to situations in which the rights and freedoms of human rights defenders are placed at risk, taking care to ensure that, in line with the provisions of the Vienna Declaration and Programme of Action concerning increased coordination on human rights within the United Nations system, the new mandate does not overlap with already existing mandates. A new mandate could also coordinate the provision of OHCHR technical assistance, for example, in the area of training to the police, military and judiciary, or to assist Governments to bring their domestic legislation into full conformity with the Declaration. A new mechanism could also report more coherently and comprehensively on all aspects of the implementation of the Declaration.

24. Each State must ensure effective promotion and implementation of the Declaration. It has been submitted that States must make every effort to sign, ratify and implement the main international human rights treaties and abide by other international human rights instruments in order to ensure that their domestic law and practice conform with international human rights standards.